

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Enhancing National Security Through the
Auction of AWS-3 Spectrum Licenses

GN Docket No. 25-70

Applying New Average Annual Gross Revenue
Benchmarks for Small Business Bidding Credits

GN Docket No. 25-71

Amendment of the Commission's Rules with
Regard to Commercial Operations in the 1695-
1710 MHz, 1755-1780 MHz, and 2155-2180
MHz Bands

GN Docket No. 13-185

REPLY COMMENTS OF

**NATIONAL CONGRESS OF AMERICAN INDIANS, TRIBAL DIGITAL VILLAGE
NETWORK, WASKAWIWIN, PUBLIC KNOWLEDGE, INSTITUTE FOR LOCAL
SELF-RELIANCE, X-LAB, BENTON INSTITUTE FOR BROADBAND, AND OPEN
TECHNOLOGY INSTITUTE AT NEW AMERICA**

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SUMMARY

The National Congress of American Indians (NCAI), Tribal Digital Village Network, Waskawiwin, Public Knowledge, Institute for Local Self-Reliance, X-Lab, Benton Institute for Broadband, and Open Technology Institute at New America (NCAI, *et al.*) submit these Reply Comments with regard to the above captioned proceedings. Although the majority of commenters either did not address the proposed Tribal Licensing Window (TLW),¹ or supported

¹ Comments of the Rural Wireless Association, GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025); Comments of the Competitive Carriers Association, GN Docket Nos. 25-70, 25-71, 13-

it,² one commenter (WISPA) expressed limited concerns³ while one other commenter (CTIA) actively opposed the proposal.⁴ Indeed, CTIA not only opposed the proposal with regard to Auction 113, but went beyond the scope of this proceeding to oppose the concept of a TLW generally. The Commission has previously rejected CTIA’s argument that the Communications Act does not permit a TLW, first in the context of broadcast services,⁵ and subsequently in the 2.5 GHz auction.⁶ Collectively, WISPA and CTIA misunderstand and understate how the TLW operates, the relevant statutes supporting a TLW, and the importance of a continued TLW. For the following reasons, the Commission should adopt a TLW for the upcoming auction.

I. WISPA’S CONCERNS ARE ADDRESSED IN NCAI *et al.*’S INITIAL COMMENTS.

WISPA states in its initial comments that, while it takes no position on a TLW, the Commission should not delay Auction 113 to hold the window, and the scope of the Tribal license should not extend beyond Tribal land.⁷ As noted in the initial comments of NCAI, *et al.*, preparation for the auction and for the TLW can occur concurrently, and the processes can be run

185 (Mar. 31, 2025); Comments of the Echostar Corporation, GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025); Comments of the Blooston Rural Carriers, GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025); Comments of Council Tree Investors, Inc., GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025).

² Comments of Shoshone-Bannock Tribes, GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025); Comments of Navajo Nation Telecommunications Regulatory Commission, GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025).

³ Comments of WISPA – The Association for Broadband Without Boundaries, GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025) (“WISPA Comments”).

⁴ Comments of CTIA, GN Docket Nos. 25-70, 25-71, 13-185 (Mar. 31, 2025) (“CTIA Comments”).

⁵ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, First Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583 (2010) (“First Tribal Broadcast Order”).

⁶ *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (modified by Erratum, 34 FCC Rcd 10386 (WTB 2019)) (“2.5 GHz Order”).

⁷ WISPA Comments at 3-4.

concurrently. Tribal lands encompass a small portion of any proposed license area – both in terms of geography and population. The inclusion or exclusion of Tribal land therefore makes no real difference to the potential bidder.

Additionally, while NCAI, *et al.* do propose that the Commission use the definition of Tribal land in Rule 73.7000⁸ rather than the more limited definition used in the *2.5 GHz Order*, this would still limit the availability of licenses to federally recognized Tribal Nations on Tribal lands. The proposed changes would allow for coverage of Tribal lands previously excluded, and would take into account the failure of licensees covering Federal trust lands and non-rural Tribal lands to adequately serve Tribal citizens and other residents of Tribal lands. Additionally, the proposed changes would solve the problem that has occurred in 2.5 GHz deployment, where Tribal government licensees cannot deploy throughout their entire Tribal land because a portion of the Tribal lands is now deemed too close to a relevant population center as a consequence of urban sprawl. Being able to serve larger populations would allow Tribal Nations the same market-based opportunities on their own Tribal lands as other carriers that provide on their Tribal lands.

As noted by NCAI, *et al.*, using the definition in Rule 73.7000 furthers the Commission’s policy goals of recognizing Tribal sovereignty and engaging in government-to-government relations as set forth in both its 2000 policy statement⁹ and the 2022 Memorandum of Understanding between the Federal Communications Commission, U.S. Department of Commerce, and U.S. Department of Interior.¹⁰ But, with regard to WISPA’s concerns, it does not

⁸ 47 C.F.R. § 73.7000.

⁹ Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, FCC 00-207 (Jun. 23, 2000) (“*Tribal Policy Statement*”).

¹⁰ *Memorandum Of Understanding Among The U.S. Department Of The Interior And The Federal Communications Commission And The U.S. Department Of Commerce National*

expand license coverage beyond the federally recognized boundaries that adhere to the federal trust responsibility to federally recognized Tribal Nations.

II. CTIA’S OPPOSITION RESTS ON ERRONEOUS INTERPRETATIONS OF THE RELEVANT STATUTES.

CTIA’s arguments against a Tribal Licensing Window come 15 years too late. Since 2010, the Commission has recognized that its authority under Section 307(b), combined with its auction authority, permits it to give priority to federally recognized Tribes on their Tribal lands.¹¹ The Commission further concluded in the *2.5 GHz Order* that this authority allowed it to create licenses covering Tribal lands and limiting eligibility for application to Tribal governments (or their designated providers).¹²

Nor is CTIA correct in its analysis that creating a TLW would “remove” the spectrum from the statutory inventory addressed by the Spectrum and Secure Technology and Innovation Act (SSTIA).¹³ As NCAI, *et al.* explained in its initial comments, Congress was extremely careful in its language.¹⁴ It did not instruct the Commission simply to “auction” the AWS-3 spectrum inventory, but to “initiate systems of competitive bidding under Section 309(j).”¹⁵ In doing so, Congress was careful to protect the FCC’s general licensing authority. Nothing

Telecommunications And Information Administration (Nov. 23, 2022), available at https://www.bia.gov/sites/default/files/dup/inline-files/mou_esb46-009818_doi-fcc-ntia_electromagnetic_spectrum_on_tribal_lands_2022-11-23_final_fcc_ntia_doi_signed_508.pdf.

¹¹ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, 24 FCC Rcd 5239 (rel. Feb. 3, 2010); *see* First Tribal Broadcast Order.

¹² *See* 2.5 GHz Order.

¹³ CTIA Comments at 8.

¹⁴ NCAI *et al.* Comments at 5-7.

¹⁵ *Id.* at 5 (*quoting* Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, H.R.5009, 118th Cong., Pub. L. No. 118-159, Div. E, Title LIV, § 5403(a) (2024) (“Spectrum and Secure Technology and Innovation Act” or “SSTIA”)).

precludes the Commission from including a TLW as part of its overall system of competitive bidding pursuant to Section 309(j) and the Commission’s general licensing authority.

Indeed, CTIA concedes, as it must, that the Commission has the authority (indeed, the obligation) to avoid mutual exclusivity where doing so serves the public interest pursuant to 47 U.S.C. 309(6)(E).¹⁶ In particular, CTIA recognizes that creating a license limited to Tribal Governments on Tribal Lands would satisfy the meaning of the word “threshold requirements” in Section 309(6)(E), just as it did pursuant to the *2.5 GHz Order*. CTIA therefore makes the rather shocking argument that providing the opportunity for Tribal Governments to obtain licenses for the express purpose of providing broadband service on Tribal lands – the least served communities in the United States – does not serve the public interest. Apparently recognizing that the Commission has previously found that such a window expressly serves the public interest by promoting rural broadband service, CTIA further attempts to limit the public interest analysis to only those interests expressly listed in Section 309(j)(3).¹⁷

But even adopting CTIA’s cramped reading of Section 309(j)(6)(E) – and thus ignoring the Commission’s government-to-government trust and treaty responsibilities, its statutory requirement to ensure provision to all Americans, as well as the agency’s own specific policy statement commitment to assist Tribal Nations in obtaining spectrum – does not aid CTIA’s argument. First, Section 309(j)(6)(b) states that nothing in Subsection 309(j) shall affect the Commission’s authority or obligations under Section 307(b), which the Commission has previously found imposes upon it a responsibility to ensure equal distribution of licenses to

¹⁶ CTIA Comments at 7.

¹⁷ *Id.*

Tribal governments and to ensure service on Tribal lands.¹⁸ More importantly, Section 309(j)(3) states that any system of competitive bidding “shall seek to promote the purposes specified in Section 151 of this Title,” *i.e.*, to provide service to all Americans.

CTIA also concedes, as it must, that Section 309(j)(3)(B) also instructs the Commission – as part of the design of any system of competitive bidding as mandated by the SSTIA – to ensure distribution of licenses to, among others, Tribal Nations and Tribal citizens. CTIA argues that this must be interpreted as limited to bidding credits, citing 309(j)(4)(D).¹⁹ But Section 309(j)(4)(D) does not limit the Commission’s authority – particularly not its responsibility to avoid mutual exclusivity through threshold requirements under Section 309(j)(6)(E). To the contrary, in addition to “tax certificates and bidding credits,” Section 309(j)(4) instructs the Commission to use its discretion to consider “other procedures.” This, combined with the explicit instruction on Section 309(j)(6)(E) to consider threshold requirements and the expressly preserved authority of Section 307(b), clearly authorizes the Commission to consider a Tribal Licensing Window as part of any “system of competitive bidding” created under the SSTIA (or any future license distribution under Section 309(j)). That CTIA would prefer that the Commission limit itself to bidding credits cannot magically erase the remaining words of the statute.

¹⁸ See First Tribal Broadcast Order. See also *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) (*Tribal Spectrum NPRM*). “The Tribal priority and other spectrum access proposals described below would further section 307(b)’s mandate to ‘make such distribution of licenses ... among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service’ with regard to Tribal lands [citing 47 U.S.C. § 307(b)].” *Id.* at par. 25.

¹⁹ CTIA Comments at 6.

CTIA's remaining arguments can be disposed of in short order. CTIA argues that had Congress intended to create a TLW as a permanent exemption to auctions, it would have done so explicitly in Section 309(j)(2).²⁰ To the contrary, the fact that Congress had a clear idea of what classes of licensees it intended to permanently exempt from auctioning of mutually exclusive licenses in no way implies any limitation on the Commission's authority to use "threshold requirements" to avoid mutual exclusivity in Section 309(j)(6)(E) where doing so serves the public interest. Indeed, the fact that Section 309(j)(6) uses the mandatory "shall," and combines it with the equally strong "ensure" in 309(j)(6)(E), negates the argument that Congress intended Section 309(j)(2) as some sort of exclusive list of entities exempt from auctions.

Given the express language of Section 309(j)(6)(E), the logical reading of Section 309(j)(2) is that the Commission is prohibited from using auctions to *resolve mutually exclusive* applications for the specific category of licenses mentioned. This is separate from the "obligation in the public interest" to *avoid* mutually exclusive applications where doing so serves the public interest. CTIA's reading pits these two provisions against one another, a result the Commission should reject as absurd.

CTIA argues that the use of a TLW would both slow the auction and decrease the revenue in a manner which would prevent the Commission from reaching the statutory goal to finance the rip-and-replace program.²¹ NCAI, *et al.* addressed these arguments in their initial comments.²² It is true that a combination of factors delayed the 2.5 GHz TLW and therefore delayed the 2.5 GHz auction. But these factors were unique. As the first attempt by the

²⁰ *Id.*

²¹ *Id.*

²² NCAI *et al.* Comments at 3, 8-9.

Commission to implement a TLW in the non-broadcast context, Commission staff and Tribal Nations lacked experience and there was inevitable “learning by doing.” Now, there is a developed process that can be readily replicated for this auction. Much as the acumen of the Commission and auction participants increasingly improved due to repeated experiences after the Commission began the process of holding auctions in the mid-1990s, it is more reasonable to expect that the benefit of the 2.5 GHz experience will allow for a much swifter design and implementation of a TLW going forward.

More importantly, the COVID-19 pandemic disrupted and delayed the 2.5 GHz auction TLW as it disrupted and delayed every aspect of the economy, daily life, and operations of federal agencies. This delay was exacerbated by the fact that, for Tribal governments and leadership, the lack of robust connectivity on such a large number of Tribal lands made remote work, including interactions with the federal government, more challenging and often impossible during an extended timeframe when it was necessary to safely and efficiently participate in the 2.5 GHz auction TLW. It is devoutly hoped that we will not have another global pandemic with similar disruptive impacts. But even if there were, it would prove equally disruptive to all aspects of the auction.²³

III. CTIA’S OPPOSITION RESTS ON INCORRECT OPINIONS ABOUT THE STATUS OF TRIBAL NATIONS, THE LACK OF WIRELESS SERVICES ON TRIBAL LANDS, AND THE OBLIGATIONS OF THE COMMISSION.

As sovereign governments with a unique legal relationship with the United States, Tribal governments have engaged with the Commission over the past 25 years in joint regulatory and other governmental efforts aimed at bringing Tribal lands and residents to a level of connectivity

²³ CTIA notes that there are still mutually exclusive license applications that remain unresolved. Rather than evidence that a TLW will delay Auction 113, this shows that the Commission may run both the TLW and the auction simultaneously. CTIA Comments at 8.

and service that approaches that of the nation as a whole. These proposals have included a wide variety of potential mechanisms, including bidding credits that would pay for a portion of build-out costs, as well as special secondary market negotiation processes for market areas on Tribal lands that lack services in robust measure.²⁴ Longstanding regulatory mechanisms and proposed regulations alike have consistently encountered hesitancy and sometimes outright opposition from CTIA. Despite the vast number of licenses over Tribal lands granted by the Commission to non-Tribal entities during the past 25 years, few of these mechanisms and licenses have resulted in overcoming the challenges that prevent robust wireless connectivity on Tribal lands.

Still, Tribal Nations are deeply vested in the potential of genuinely working side-by-side with the communications industry and the federal regulatory agencies as well. The potential of working directly with CTIA and its members, while continuing to engage with the Commission on proposed solutions in furthering the government-to-government trust responsibility, represents one of the greatest opportunities to close the digital divide. Over the decades, the Commission has consistently engaged with Indian Country to develop and review new solutions that would benefit both Indian Country and the communications industry alike. Tribal Nations reside on the other side of the enduring divide and are always willing to engage in potential partnerships that would improve the lives of their communities.

However, inaccurate and inappropriate positions about Tribal Nations and the reality of Indian Country's digital divide must be addressed as well. CTIA's bold statements that the Commission should dismiss calls for any TLW "as a de facto part of all spectrum auctions going forward," and that "such windows are statutorily unsound and are not in the public interest" are

²⁴ See, e.g., *In the Matter of Extending Wireless Telecommunications Services to Tribal Lands*, First Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11794 (2000), See also, *Tribal Spectrum NPRM*, note 37, *supra*.

simply incorrect.²⁵ CTIA also seemingly argues that a TLW is unnecessary because its members already serve Tribal lands. Its single sentence claiming that “wireless providers—working in partnership with Tribal governments—have made significant inroads delivering wireless broadband connectivity to Tribal communities across Tribal lands,”²⁶ belies a misunderstanding of the complex underpinnings and true extent of the digital divide on Tribal lands.

Some projects in just a few places are not what is needed. After decades, Indian Country cannot be content with only “significant inroads” into such a profound arena of socio-economic and geopolitical challenges. Tribal Nations have long called for genuine, new, and lasting solutions representing change to the old status quo processes and procedures that helped build and today widen the divide. The TLW is an important part of a genuine solution. The grassroots reality of the lack of robust wireless services on Tribal lands consists of costly and complex regulatory and operational obstacles. It is a reality that is only made worse by CTIA’s comprehensive opposition and strategic disregard for Indian Country.

Finally, CTIA’s statement that only an auction of all available spectrum “will permit Tribal applicants to determine for themselves if the spectrum is desirable, and such entities may avail themselves of any designated entity opportunities available, including the Tribal lands bidding credit,”²⁷ clearly suggests that CTIA would prefer treating Tribal Nations as afterthoughts and adversarial competitors to the wireless industry, at best, rather than potential partners and governmental clientele. Tribal Nations would prefer opportunities to be the latter.

The reference to the Tribal Lands Bidding Credit (TLBC) is particularly disingenuous. It not only disregards the legal status of Tribal Nations as recognized in the Commission’s creation

²⁵ CTIA Comments at 2, 6.

²⁶ *Id.* at 3.

²⁷ *Id.* at 9.

of the TLW process, but it also suggests that, in order to obtain a license over their own lands to serve their own communities, citizens, residents, and visitors, Tribal Nations should be forced to purchase that license and in so doing utilize a competitive mechanism – a bidding credit that so few of CTIA’s own members have actually utilized themselves. Licenses sold at auction are not congruent to Tribal lands. Considering the great number of licenses granted over Tribal lands since the TLBC was created, the TLBC has not seen any great success in the field, much less become a genuine and lasting solution to the challenges of wireless connectivity on Tribal lands. The Commission has updated the mechanism over the years, and most recently sought to improve the TLBC process and procedures in 2011. Again now, CTIA treats the TLBC indifferently, as it has before, in its advocacy before the Commission.

These flagrant, patronizing, and incorrect statements should be called out and dismissed. Tribal Nations, their communities, and residents deserve better.

As then-FCC Chairman Ajit Pai, stated in his letter of December 2, 2019, to then-NCAI President Fawn Sharp:

[W]e must make sure that the 2.5 GHz band is used to bring advanced wireless services to those who for too long have been on the wrong side of that divide. As I’ve seen for myself—from the Rosebud Sioux Reservation in South Dakota to the Navajo Nation in Arizona, from the Coeur D’Alene Reservation in Idaho to the Jemez and Zia Pueblos in New Mexico—the digital divide is most keenly felt in Indian Country.²⁸

In his letter, then-Chairman Pai went on to add that “...early opportunity to access this spectrum will help some of the most marginalized communities in the country.” In closing, he stated that

[t]he FCC takes seriously its trust relationship with federally-recognized Tribal Nations, and we share the common goal of closing the digital divide in Indian Country. To this end, it is important that we collaborate to ensure that interested

²⁸ See Letter from Ajit V. Pai, Chairman, Federal Communications Commission, to Fawn Sharp, President, National Congress of American Indians, dated December 2, 2019, at 1.

Tribes can take advantage of this unprecedented option. Working together, we can and will bring greater digital opportunities to everyone in Indian Country.²⁹

Those words are as true in 2025 as they were in 2019. As the new CEO of CTIA, Mr. Pai will have the opportunity to remain consistent in his convictions and awareness of Indian Country's needs. The TLW is an important, appropriate, and effective tool that should be utilized by the Commission and embraced by CTIA's members and other commercial wireless operators as part of the basis of new opportunities to work with Tribal Nations throughout Indian Country.

Indian Country stands ready to work with CTIA and the Commission alike to address in concert the persistent digital divide and the lagging levels of wireless services on Tribal lands. With their positions in this docket, CTIA suggests that they might prefer to ignore Tribal Nations, their citizens and residents, as well as the Commission's responsibilities, authorities, and opportunities. Indian Country has long advocated for and aspires to the opposite. Indeed, the opposite is more likely true, if there are genuine opportunities to provide the basis of partnerships, such as actually being license holders.

Respectfully submitted,

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²⁹ *Id.*